***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 76-4075

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

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SO CHAN,

Petitioner,

Docket
No.76-4075

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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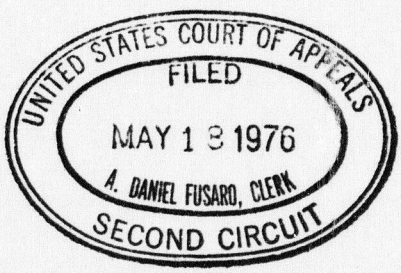
B
P/S

PETITION TO REVIEW
A FINAL ORDER OF
THE BOARD OF IMMIGRATION APPEALS

PETITIONER'S APPENDIX

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UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A15 723 566 - New York

SEP 8 - 1975

In the Matter of )

SO CHAN ) In Deportation Proceedings

- Respondent - )

CHARGE: I & N Act - Section 241(a)(2)(8 USC 1251(a))
remained longer - Nonimmigrant Crewman.

APPLICATION: I & N Act - Section 244(a)(1)(8 USC 1254(a)(1)
Suspension of Deportation; or Voluntary Departure.

| In Behalf of Respondent: | In Behalf of Service: |
|---|---|
| Steven Mukamal, Esq.<br>127 John Street<br>New York, N. Y. 10038 | Allan A. Shader, Esq.<br>Trial Attorney<br>New York, N. Y. 10007 |

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 60 year old married male alien, a native of China and a citizen of the Republic of China on Formosa who entered the United States in Houston, Texas on about August 24, 1962when he was admitted as a nonimmigrant Crewman authorized to remain in this country for the period of time his vessel remained in port, not exceeding 29 days. At a hearing held on October 2, 1964 he was found deportable as an overstay crewman and granted the privilege of voluntary departure, within the time fixed by the District Director with an alternate provisionfor deportation upon his failure to depart when and as required. Pursuant to this order he was given to June 10, 1966 to depòrt voluntarily and

upon his failure to do so a warrant of deportation was entered on August 5, 1966. On July 3, 1975 the proceedings were reopened to permit the respondent to apply for suspension of deportation.

Deportability is not in issue. The record reflects that the respondent's wife and 22 year old daughter are in this country, having been admitted as visitors in December 1972 until May 15, 1973, and are presently under deportation proceedings as overstay visitors. He also has a son alleged to be a student since 1971 whose stay has been extended to June 1976. The respondent is employed as a Waiter allegedly earning $100 per week. His wife is not employed. His daughter works as a cashier in a restaurant.

Copies of Income Tax Returns, an employment certificate, and other documentary evidence have been presented warranting a finding that respondent has been continuously physically present in the United States for at least the preceding seven years. Respondent has stated that he has never been arrested for any crime and no evidence has been presented to the contrary.

The respondent claims that his deportation would result in extreme hardship to himself because his entire immediate family is in the United States and he would be unable to support them if he were forced to return to Hong Kong. In addition he stated that he has invested $8,000 in the restaurant where he is employed, but has acknowledged that he does not participate ~~actually~~ actively in the management of such business. An immigrant visa is not available to him at the present time.

The records reflect that a notice was sent to respondent requiring him to surrender for deportation on May 18, 1967 and that he failed to do so. Instead his then Attorney submitted an application for a stay of deportation dated May 16, 1967 based on respondent's alleged suffering from palpitation, insomnia and anxiety - neurosis. This request was denied on May 19, 1967 by notice sent to the respondent and his attorney.

Respondent has acknowledged that he did not surrender for deportation because he did not want to return to China. He further acknowledged that he failed to report his address in January of each year as required by law, and that he tried to hide from the Immigration Service ever since he was called upon to surrender. In this connection he admitted that although he maintained a mailing address at Henry Street, New York he never actually lived there. Moreover, he left the restaurant in Brooklyn, where he was employed at the time of his surrender notice in order to avoid detection. He further stated that he subsequently left a different restaurant where he was employed in Passaic, New Jersey to avoid apprehension by the Immigration Service and took up employment in another restaurant in Paterson, New Jersey where he assumed Immigration Service was not aware of his presence. It was not until July 1, 1975 as a result of numerous efforts by Immigration Service to locate him, that he was finally apprehended and taken into custody.

REspondent has also acknowledged that in connection with the tax returns which he filed he claimed his wife as a dependent although she was not in this country during a portion of that time because the person who assisted

in preparing the returns told him it was alright to do so. He also acknowledged that his tax returns did not report his full earnings stating that this was "the custom". As a result of these proceedings he filed amended tax returns showing substantial income over and above that previously reported.

Assuming for the purpose of this decision that the respondent meets the minimum requirements for eligibility for suspension of deportation, nevertheless, as a matter of discretion, that privilege should not be extended to him. Although he was given an ample opportunity to depart voluntarily in connection with the prior hearing, he failed to do so, and when called upon to surrender for deportation, ignored this notice. Instead he deliberately evaded service efforts to locate him until he was finally apprehended. In this manner he has managed to eke out his residence in this country to meet the physical presence requirement for suspension of deportation. Although his close family ties are in this country, none of them have lawful permanent resident status and in fact his wife and daughter have apparently likewise flouted the Immigration laws by overstaying their leave since May, 1973.

Upon consideration of the entire record ~~therefore~~ it is felt that the maximum relief warranted is the privilege of voluntary departure which will be extended now to the respondent within such time and under such conditions as the District Director shall direct. Upon his failure to depart when and as required he should be deported. He has designated

the Republic of China on Taiwan as the country to which he prefers to be deported, and deportation will therefore be directed to that country and if it cannot be effected there then, in the alternative to Hong Kong where the respondent resided prior to his entry into the United States.

ORDER: IT IS ORDERED that the respondent's application for suspension of deportation under Section 244(a)(1) of the Immigration and Nationality Act, as amended be denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government within such time and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Republic of China on Taiwan on the charge contained in the order to show cause.

IT IS FURTHER ORDERED that if the aforenamed country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to Hong Kong.

HENRY I. MILLMAN
Immigration Judge

United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

FEB 5 - 1976

File: A15 723 566 - New York

In re: SO CHAN

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Stephen Singer, Esq.
Barst & Mukamal
127 John Street
New York, N.Y. 10038

ON BEHALF OF I&N SERVICE: George Indelicato, Esq.
Appellate Trial Attorney

ORAL ARGUMENT: December 17, 1975

CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251 (a)(2)) - Nonimmigrant crewman - remained longer than permitted

APPLICATION: Suspension of deportation

In a decision dated October 2, 1964, an immigration judge found the respondent deportable as charged. No appeal was taken and that decision became final. The proceedings were later reopened to allow the respondent to apply for suspension of deportation under section 244(a)(1) of the Immigration and Nationality Act. In a decision dated September 8, 1975, the immigration judge denied the respondent's application for suspension of deportation and granted him the privilege of departing voluntarily from the United States in lieu of deportation. The respondent has appealed from that decision. The appeal will be dismissed.

The 60-year-old married respondent, a native of China and a citizen of the Republic of China on Taiwan, entered the United States as a nonimmigrant crewman on or about August 24, 1962, authorized to remain in that status for 29 days. He remained longer, was found deportable and was granted the privilege of voluntary departure. He again failed to depart, and did not surrender as directed by May 18, 1967, but instead evaded the Service for over eight years until his apprehension on July 1, 1975. He failed to report his address in January of each year as required by law and he failed initially to report his total earnings in his annual Federal income tax return.

Eligibility of the respondent for suspension of deportation is governed by section 244(a)(1) of the Immigration and Nationality Act. That section requires that the respondent shall have been physically present in the United States continuously for a period of at least seven years immediately preceding the date of his application and that he proves that during all of such period he was and is a person of good moral character. In addition, the respondent has the burden of showing that his deportation would result in extreme hardship to himself, or to his spouse, parent or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

The immigration judge made no specific findings as to the respondent's statutory eligibility for consideration for the relief of suspension, but denied the application in the exercise of administrative discretion.

We agree with the immigration judge that the respondent does not warrant a favorable exercise of administrative discretion. He has repeatedly violated the immigration laws over a long period of time and he has no family in this country who are United States citizens or lawful permanent residents. Consequently, the appeal will be dismissed.

A15 723 566

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within such time and under such conditions as the District Director shall direct; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman